

STATE OF MICHIGAN
COURT OF APPEALS

WILLIS BRADLEY,

Petitioner-Appellee,

v

STATE EMPLOYEES RETIREMENT BOARD,

Respondent-Appellant.

UNPUBLISHED

March 29, 2002

No. 226170

Ingham Circuit Court

LC No. 99-089813-AA

Before: Sawyer, P.J., and Murphy and Hoekstra, JJ.

PER CURIAM.

Respondent appeals by leave granted an order of the circuit court reversing respondent board's denial of petitioner's request to purchase service credit that was lost pursuant to a retirement fund withdrawal made by petitioner in 1974. We affirm the circuit court's decision.

Petitioner began his employment with the state in 1967, and in 1974, he withdrew retirement funds that had accumulated up to that point in time. As a result of the withdrawal, petitioner lost all of his accumulated service credit for approximately seven years of service. There is no dispute that the 1974 retirement fund withdrawal had the effect of reducing petitioner's service credit. The issue presented to us regards petitioner's knowledge of the effect of the withdrawal, and respondent's argument that petitioner could not buy back the service credit after his retirement.

Petitioner met with representatives of the State Employees' Retirement System [SERS] on three separate occasions, once each in 1989, 1991, and 1992, in order to discuss the 1974 withdrawal. In the 1989 meeting, petitioner was presented with documents and informed that he could buy back the retirement funds previously withdrawn, if he paid the initial amount he had received, plus interest. The original amount of the withdrawal was approximately \$3,000. In the two subsequent meetings, petitioner was again told that in order to buy back the benefits, he would need to repay the amount withdrawn plus interest. In the 1991 meeting, petitioner was also told that his retirement paycheck would be increased if he bought back his benefits. Petitioner testified that in all the meetings, he was never told that his number of years of service would be reduced in order to calculate his retirement benefits as a result of the withdrawal. Instead, he was under the impression that the total amount of his retirement benefits would simply be reduced based on the withdrawal. Petitioner did not repurchase the service credit during his employment.

From the time of the withdrawal until the time of his retirement, petitioner received three bills from the SERS, and he specifically remembered receiving one in 1992. The bills also informed him that in order to buy back his benefits, he would need to repay the amount withdrawn plus interest, but the bills did not discuss his total years of service.

Lila Christiansen, supervisor of the SERS, testified at the administrative hearing that when petitioner decided to retire, the SERS sent him a final bill, dated March 6, 1997, which included a calculation of petitioner's total service years. However, petitioner testified that he did not receive the bill until April 3, 1997, which was two days after his retirement on April 1, 1997. Petitioner testified that after receiving the bill, he immediately went to the SERS to try and buy back his benefits, but they told him that once he retired he could not do so. Petitioner testified that April 3, 1997, was the first time he realized his previous withdrawal had an impact on his number of service years.

Christiansen testified that the final bill stated a due date for repurchase of the credits of April 1, 1997, the date of petitioner's retirement. Christiansen further testified that a counseling memo (used at counseling meetings as a type of checklist of matters to discuss) located in petitioner's file, did not indicate his number of service years. Regarding the last opportunity an employee had to repurchase service credit, Christiansen testified that "[t]hey can buy [credit] back prior to separating from state service or if we have not given it to them in a timely manner, when they retire, we will allow them thirty days for them to pay it back from the date we submit the bill."

Petitioner requested an administrative hearing regarding the SERS decision not to allow him to repurchase his service credit. The administrative law judge issued a proposed decision recommending denial of petitioner's request to repurchase the service credit because according to the administrative law judge's interpretation of the statute, only members of the retirement system may repurchase credits, but petitioner was no longer a member at the time he sought to repurchase the credit, having already retired. Respondent board accepted the decision as presented.

Petitioner then appealed the decision to the circuit court, and the court reversed respondent's decision, and ordered that respondent allow petitioner the opportunity to buy back his service credit. The court's order was premised on the grounds that the administrative law judge's decision was not based on competent, material, and substantial evidence, in that it did not contemplate "a vital piece of evidence." The evidence was Christiansen's testimony that petitioner had thirty days after receiving the March 6, 1997 bill to repurchase the credit which would have allowed petitioner until April 3, 1997, to make the purchase. The circuit court ruled that although the thirty-day policy was an unwritten one, the SERS was still bound to follow it. We granted respondent's application for leave to appeal.

Respondent relies on MCL 38.16 for the proposition that a member of the SERS can only buy back service credit while he is still employed by the state, and that once a person retires he is no longer an employee, and therefore, cannot buy back his service credit.¹ Respondent asserts

¹ Respondent relies on the following portion of MCL 38.16(3), which provides:

(continued...)

that the SERS, nor the court, can grant petitioner a thirty-day extension, because such action is not in compliance with MCL 38.16.

Const 1963, art 6, § 28 provides, in relevant part:

All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record.

The scope of review provided by MCL 24.306(1) of the Administrative Procedures Act provides:

(1) Except when a statute or the constitution provides for a different scope of review, the court shall hold unlawful and set aside a decision or order of an agency if substantial rights of the petitioner have been prejudiced because the decision or order is any of the following:

- (a) In violation of the constitution or a statute.
- (b) In excess of the statutory authority or jurisdiction of the agency.
- (c) Made upon unlawful procedure resulting in material prejudice to a party.
- (d) Not supported by competent, material and substantial evidence on the whole record.
- (e) Arbitrary, capricious or clearly an abuse or unwarranted exercise of discretion.
- (f) Affected by other substantial and material error of law.

We first disagree that MCL 38.16(3) is applicable to this case. Respondent fails to note the effect of the portion of MCL 38.16(3), which provides that it is applicable to “[a]n employee

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[I]f an employee described in this subsection has withdrawn his or her accumulated contributions from the employees' savings fund, the member shall have the service credit forfeited by him or her restored to his or her credit if he or she returns to the fund all amounts that were previously withdrawn from the fund, together with regular interest on that amount computed from the date of withdrawal to the date of repayment.

who reenters state service within 15 years after the date of his or her last separation from state service, or who accumulates 5 or more years of continuous service credit as a member of the retirement system after reentering state service.” MCL 38.16(1) states that “[e]xcept as otherwise provided in this act, if a member separates or is separated from state service without leave of absence before becoming eligible to retire with a retirement allowance payable from funds of the retirement system, the member ceases to be a member and forfeits credit for all service rendered by him or her before the date the member last separated from state service.” Here, the record does not indicate that petitioner was separated from service in 1974 when he withdrew funds or any time prior thereto. Christiansen in fact testified that petitioner did not separate from state service in 1974 or prior thereto. Payment by petitioner would be to replace service credit time lost due to the withdrawal of funds and not because of separation from service.

Additionally, our decision to affirm rests on principles of estoppel and procedural due process, which require the application here of the unwritten thirty-day policy providing a person extra time to repurchase service credit where notice was insufficient, even if the statutory deadline was the date on which petitioner retired. We hold that respondent board’s decision was contrary to law and not based on competent, material, and substantial evidence.

“Equitable estoppel is not an independent cause of action, but instead a doctrine that may assist a party by precluding the opposing party from asserting or denying the existence of a particular fact.” *Conagra, Inc v Farmers State Bank*, 237 Mich App 109, 140-141; 602 NW2d 390 (1999). In *Woods v State Employees Retirement System*, 440 Mich 77, 81-82 n 9; 485 NW2d 672 (1992), our Supreme Court indicated, by implication, that estoppel could be invoked to prohibit the state from barring an attempt to buy back service credit on equitable grounds, even past any deadline to do so, although the SERS was not estopped under the particular facts of that case. Rudimentary procedural due process requires, in part, notice and an opportunity to be heard. *Verbison v Auto Club Ins Ass’n*, 201 Mich App 635, 641; 506 NW2d 920 (1993); see also *Marshall v D J Jacobetti Veterans Facility (After Remand)*, 447 Mich 544, 548-550; 526 NW2d 585 (1994). Here, petitioner has a significant property interest at stake, his retirement income, which is subject to a significant reduction if he is not allowed to repurchase his service credit.

A review of the record indicates that petitioner did not have notice, until April 3, 1997, that his years of service to the state would be reduced if he failed to repay the money withdrawn plus interest. Although petitioner may have previously known that the withdrawal would affect his retirement income, as he believed by the amount of the withdrawal, it does not necessarily follow that he was aware that the withdrawal would, in effect, cancel out seven years of service. The record does not reflect any evidence indicating that petitioner had such knowledge prior to April 3, 1997. The record also does not indicate that there was any evidence that petitioner received the March 6, 1997 correspondence before his retirement. Although the document was dated March 6, 1997, there was no indication as to when it was actually mailed to petitioner.

Additionally, respondent’s attorney acknowledged at oral argument in the circuit court that the thirty-day extension policy existed and was applied when a state employee asserted inadequate notice. Not allowing a party to utilize the policy on appropriate facts is inequitable, thereby invoking equitable estoppel principles, and is repugnant to concepts of due process. The administrative law judge’s failure to consider these applicable legal principles was contrary to

law. The facts presented by petitioner justified the application of the thirty-day extension policy, and there was not competent, material, and substantial evidence to find to the contrary. We affirm the circuit court's reversal of respondent board's denial of petitioner's request to repurchase service credit.

Affirmed.

/s/ David H. Sawyer

/s/ William B. Murphy

I concur in result only.

/s/ Joel P. Hoekstra